court said (219 U. S. 486): 'Whether, without enforcing the contract in suit, the defendants in error may by some form of proceeding against the railroad company, recover or restore the rights they had when the railroad collision occurred, is a question not before us, and we express no opinion on it.'"

Commerce—Employers' Liability—When Employee Is Engaged in "Interstate Commerce"—Chicago, Rock Island, & Pacific Railway Company, Plff. in Err., v. Lizzie L. Wright and Henry C. Berge, Administrators, etc., 36 Sup. Ct. Rep. 186.—An employee of an interstate carrier, injured in a collision while taking a road engine from a point in one state to a repair shop in another state, was employed at the time in interstate commerce, within the meaning of the Federal Employers' Liability Act of April 22, 1908 (35 Stat. at L. 65, chap. 149, Comp. Stat. 1913, § 8657), although the train order under which he was then proceeding directed that his engine be run "extra" between two named points, both of which are in the same state.

The Supreme Court in the principal case used the following language: "It is entirely clear that taking the road engine from Phillipsburg, Kansas, to Council Bluffs, Iowa, was an act of interstate commerce, and that the intestate, while participating in that act, was employed in such commerce. That the engine was not in commercial use, but merely on the way to a repair shop, is immaterial. It was being taken from one state to another, and this was the true test of whether it was moving in interstate commerce. See North Carolina R. Co. *v.* Zachary, 232 U. S. 248, 259, 58 L. ed. 591, 595, 34 Sup. Ct. Rep. 305, Ann. Cas. 1914C, 159. The courts of the state rested their decision to the contrary upon the train order under which the intestate was proceeding, and upon the decisions in Chicago & N. W. R. Co. *v.* United States, 21 L. R. A. (N. S.), 690, 93 C. C. A. 450, 168 Fed. 236, and United States *v.* Rio Grande Western R. Co., 98 C. C. A. 293, 174 Fed. 399. In this they misconceived the meaning of the train order and the effect of the decisions cited. The order was given by a division train despatcher, and meant that between the points named therein the engine would have the status of an extra train, and not that it was going merely from one of those points to the other. The cases cited arose under the safety appliance acts of Congress, and what was decided was that those acts were not intended to penalize a carrier for hauling to an adjacent and convenient place of repair a car with defective appliances, when the sole purpose of the movement was to have the defect corrected, and the car was hauled alone, and not in connection with other cars in commercial use. It was not held or suggested that such a hauling from one state to another was not a movement in interstate commerce, but only that it was not penalized by those acts."